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APPLICATION N	D. FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,434	(	07/23/2003	Gregg Scheller	7873	
23830	7590	12/15/2004		EXAM	INER
KEVIN I		_	TRUONG, KEVIN THAO		
	ATTORNEY AT LAW 11237 CONCORD VILLAGE AVENUE				PAPER NUMBER
ST. LOUIS, MO 63123-2273				3731	<u></u>

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	•	1				
	Application No.	Applicant(s)				
	10/625,434	SCHELLER ET AL. /				
Office Action Summary	Examiner	Art Unit	<u> </u>			
	Kevin T. Truong	3731				
The MAILING DATE of this communicate Period for Reply	tion appears on the cover sheet w	ith the correspondence address				
	DEDLY IS SET TO EVOIDE A A	AONTH(S) FROM				
A SHORTENED STATUTORY PERIOD FOR THE MAILING DATE OF THIS COMMUNICA  - Extensions of time may be available under the provisions of 3 after SIX (6) MONTHS from the mailing date of this communic  - If the period for reply specified above is less than thirty (30) de  - If NO period for reply is specified above, the maximum statuto  - Failure to reply within the set or extended period for reply will, Any reply received by the Office later than three months after earned patent term adjustment. See 37 CFR 1.704(b).	ATION. 7 CFR 1.136(a). In no event, however, may a cation. ays, a reply within the statutory minimum of thir ry period will apply and will expire SIX (6) MOI by statute, cause the application to become A	reply be timely filed  rty (30) days will be considered timely.  NTHS from the mailing date of this communication.  BANDONED (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed o	on .					
	☐ This action is non-final.					
3) Since this application is in condition for	allowance except for formal mat	ters, prosecution as to the merits is				
closed in accordance with the practice	under <i>Ex parte Quayle</i> , 1935 C.[	). 11, 453 O.G. 213.				
Disposition of Claims						
4)⊠ Claim(s) <u>1-20</u> is/are pending in the appl	lication.		-			
4a) Of the above claim(s) is/are v						
5) Claim(s) is/are allowed.						
6)⊠ Claim(s) <u>1-20</u> is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction	n and/or election requirement.					
Application Papers						
9) The specification is objected to by the E	xaminer.					
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
Applicant may not request that any objection						
Replacement drawing sheet(s) including the	e correction is required if the drawing	g(s) is objected to. See 37 CFR 1.121(d).				
11) The oath or declaration is objected to by	the Examiner. Note the attache	d Office Action or form PTO-152.				
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for	foreign priority under 35 U.S.C.	§ 119(a)-(d) or (f).				
a) ☐ All b) ☐ Some * c) ☐ None of:						
1. Certified copies of the priority do	cuments have been received.					
2. Certified copies of the priority do	cuments have been received in /	Application No				
<ol><li>Copies of the certified copies of t</li></ol>	he priority documents have beer	n received in this National Stage				
application from the International	,					
* See the attached detailed Office action for	or a list of the certified copies no	t received.				
Attachment(s)	<b>∆\</b>	Summany (PTO 442)				
Notice of References Cited (PTO-892)     Notice of Draftsperson's Patent Drawing Review (PTO-	-948) Paper No	Summary (PTO-413) (s)/Mail Date				
3) Information Disclosure Statement(s) (PTO-1449 or PTo Paper No(s)/Mail Date 1/22/04.		Informal Patent Application (PTO-152)				

## **DETAILED ACTION**

## Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 1, 6-7, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Siepser (U.S. 5,203,865).

As to claims 1, 6, and 7, Siepser discloses in figures 5 and 6, a blade having a V-shape tip (60), said tip (60) having a point (68) and a broad portion (located at 66), wherein said tip (60) having a first leg with a sharpened edge (76,78) and a second leg with a dulled edge (at tapered surface (80,82)); a tip holding shaft (64) connected to said tip (60) and further a cylindrical handle (62) connected to said tip holding shaft (64).

As to claims 18-20, wherein the Siepser device is capable of performing the method as claimed due to the fact that the Siepser device is for use in ophthalmic surgery.

## Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit: 3731

4. Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siepser.

It would have been an obvious matter of design choice to make the Siepser 's first and second legs at a degree and length as claimed, since such a modification would have involved a mere change in size of a component. A change in degree and size are generally recognized as being within the level of ordinary skill in the art.

Page 3

Change in dimension, degree, size, ect. without special functional significance are not patentable. Research Corp. v. Nasco Industries, Inc., 501 F2d 358; 182 USPQ 449 (CA 7), cert. denied 184 USPQ 193; USLW 3359 (1974), In re Rose, 105 USPQ 137, and In re Aller et al., 105 USPQ 233.

5. Claims 2-5, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siepser (U.S. 5,203,865) in view of Ross et al. (U.S. 6,663,644).

Siepser discloses the claimed invention except for a depth gauge line disposed on the V-shaped tip (60). However, Ross et al teaches in figure 9, and col. 8, lines 61-63, a depth gauge line (24) disposed on the blade (tip (3)) to indicates the limit depth of penetration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Siepser device with a depth gauge line on the Tip (60) to indicates the limit depth of penetration as taught by Rosse et al so that the Siepser device is constructed in a manner that minimizes the tolerance of the cutting depth into the eye.

Art Unit: 3731

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin T. Truong Primary Examiner Art Unit 3731

ktt